

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Cornelius Richard Richmond,	)	
#B-1180819353, a/k/a Cornelius R.	)	C/A No. 8:08-3173-MBS-BHH
Richmond,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
Mrs. Dianne Pieterse, Detective, Myrtle	)	
Beach Police Department,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Cornelius Richard Richmond is a pretrial detainee currently detained at the J. Reuben Long Detention Center in Conway, South Carolina. Plaintiff, appearing pro se, filed the within action on September 17, 2008, alleging that his Fourth Amendment rights have been violated. Plaintiff brings this action seeking damages pursuant to 42 U.S.C. § 1983.

This matter is before the court on motion for summary judgment filed by Defendant on February 12, 2009, in which Defendant asserts that Plaintiff's claim is barred by Heck v. Humphrey, 512 U.S. 477 (1997) (prohibiting recovery for damages under § 1983 for allegedly unconstitutional conviction, absent proof that conviction has been invalidated). On February 13, 2009, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), advising Plaintiff of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response in opposition to Defendant's motion on February 25, 2009, to which Defendant filed a reply on March 5, 2009.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. On July 31, 2009, the Magistrate Judge issued a Report and Recommendation. The Magistrate Judge noted that, contrary to Defendant's contention, Heck does not apply because Plaintiff has not yet been convicted of a crime. Relying on Wallace v. Kato, 549 U.S. 384, 393 (2007), the Magistrate Judge recommended that Defendant's motion for summary judgment be denied and that the court stay the within action until the criminal charges have been resolved. No party filed objections to the Report and Recommendation. Plaintiff filed a response to the Report and Recommendation on August 11, 2009 in which he concurred in the Magistrate Judge's ruling.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, Defendant's motion for summary judgment (Entry 20) is **denied** and the action stayed pending resolution of the underlying criminal case. The case is recommitted to the

Magistrate Judge for further pretrial handling, including monitoring the progress of the underlying criminal matter.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina

August 26, 2009